

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 7 of 1995

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

BHAVNABEN R NATKAR

Versus

STATE OF GUJARAT

Appearance:

MR YS LAKHANI for Petitioners
Mr. ST Mehta, Addl.PP for Respondent No. 1
MR PM THAKKAR for Respondent No. 2

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 14/02/97

ORAL JUDGEMENT

Petitioners herein preferred Criminal Miscellaneous Application No. 182 of 1993 for maintenance under section 125 of the Code of Criminal Procedure before the learned Judicial Magistrate, First Class, Jamnagar. Said application was allowed on 31st August, 1994 and the monthly maintenance of Rs. 400/and

of Rs.300/- was allowed to the petitioners respectively. Feeling aggrieved, respondent No. 2 preferred Criminal Revision Application No. 143 of 1994 before the learned Sessions Judge, Jamnagar. Said revision application was allowed on 9th December, 1994. The learned Sessions Judge reduced the amount of maintenance awarded to the petitioners to that of Rs.300/- and Rs.200 respectively. Feeling aggrieved, the petitioners have preferred this petition before this Court.

2. It is the claim of the petitioners that petitioner No. 1 was deserted by respondent No. 2 and that respondent No. 2 owned restaurant in the Gandhidham Township and had also inherited large number of immovable properties from his father. The learned Judge, considering the evidence placed on records of the matter, recorded finding that the petitioner No. 1 was deserted by respondent No. 2 - her husband and that respondent No. 2 had neglected to maintain the petitioners. The learned Magistrate held that the substantial properties were left by the father of respondent No. 2. However, arrangement was so made so as to deprive the petitioners of their right to maintenance. The learned Magistrate, therefore, did not believe the contention of respondent No. 2 that he had no sufficient means to maintain the petitioners and that he was serving in the restaurant owned by his brother and was paid a salary of Rs. 700/- per month. The learned Sessions Judge upheld the findings recorded by the learned Magistrate. The learned Magistrate did hold that the petitioner No. 1 was deserted by respondent No. 2 and that the late father of respondent No. 2 had executed his will in such a manner that the petitioners would be deprived of their right to maintenance. Thus, both the Courts below have not believed respondent No. 2 and have come to the conclusion that the settlement of the properties between respondent No. 2 - husband and his brothers were so made so as to deprive the petitioners of their right to maintenance. However, the learned Sessions Judge, for no reason, came to the conclusion that the amount of Rs.700/- awarded to the petitioners by way of maintenance was too excessive and, therefore, proceeded further to reduce it to Rs.500/-. In my opinion, the learned Sessions Judge has proceeded on surmises and conjectures. The order of the learned Sessions Judge is not supported by sound reasoning. The learned Sessions Judge having come to the conclusion that the petitioner No. 1 was deserted by respondent No. 2 and that the efforts were being made by respondent No. 2 and his brothers to deprive the petitioners of their right to maintenance, he ought not to have reduced the amount of maintenance in

absence of any concrete evidence in respect of the income of the respondent No. 2. Thus, in my view, the learned Sessions Judge has erred in reducing the amount of maintenance awarded to the petitioners herein.

3. In view of the above discussion, petition is allowed. Judgment and the order of the learned Sessions Judge, Jamnagar passed in Criminal Revision Application No. 143 of 1994 on 9th December, 1994 is quashed and set aside. Judgment and order of the learned Judicial Magistrate, First Class, Jamnagar passed in Miscellaneous Criminal Application No. 182 of 1993 on 31st August, 1993 is restored. Respondent No. 2 is directed to pay the monthly maintenance of Rs.700/- to the petitioners herein regularly with effect from 1st March, 1997. Respondent No. 2 is further directed to pay the arrears of maintenance to the petitioners calculated in accordance with the order of the learned Judicial Magistrate, First Class, Jamnagar on or before 31st March, 1997. Rule is made absolute accordingly.

*Vyas